

(b) Release or extinguish any violation of this part or any regulation issued there under, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

[69 FR 17850, Apr. 4, 2004. Redesignated at 74 FR 56540, Nov. 2, 2009]

§ 983.92 Exemption.

Any handler may handle pistachios within the production area free of the requirements in §§ 983.50 through 983.58 and § 983.71 if such pistachios are handled in quantities not exceeding 5,000 dried pounds during any production year. The Secretary, upon recommendation of the committee, may issue rules and regulations changing the 5,000 pound quantity applicable to this exemption.

[74 FR 56540, Nov. 2, 2009]

Subpart—Rules and Regulations

§ 983.150 Aflatoxin regulations.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds, on the basis of such recommendation or other information, that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler, and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot (“lot samples”) of sufficient weight to comply with Table 1 and Table 2 of this section.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, one sample (“test sample”) shall be created from the pistachios designated for aflatoxin testing in compliance with Tables 1 and 2 of this paragraph for inshell and kernel pistachio lots that weigh up to and including 4,400 pounds. For lot sizes larger than 4,400 pounds, two samples (“test samples”) shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements to Tables 1 and 2 of this paragraph. The test samples shall be prepared by, or under the supervision of an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1 and Test Sample #2. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the minimum number of incremental samples required are shown in Table 1 of this paragraph. The gross weight of the kernel lot sample for aflatoxin testing and the minimum number of incremental samples required is shown in the Table 2 of this paragraph.

TABLE 1 TO § 983.150(d)(2)—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	2.0	2.0
221–440	15	3.0	3.0
441–1,100	20	4.0	4.0
1,101–2,200	30	6.0	6.0

TABLE 1 TO § 983.150(d)(2)—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION—Continued

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
2,201–4,400	40	8.0	8.0
4,401–11,000	60	12.0	6.0
11,001–22,000	80	16.0	8.0
22,001–150,000	100	20.0	10.0

TABLE 2 TO § 983.150(d)(2)—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.0	1.0
221–440	15	1.5	1.5
441–1,100	20	2.0	2.0
1,101–2,200	30	3.0	3.0
2,201–4,400	40	4.0	4.0
4,401–11,000	60	6.0	3.0
11,001–22,000	80	8.0	4.0
22,001–150,000	100	10.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatography (HPLC), Vicam Method (Aflatest), or other methods as recommended by not fewer than eight members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots “negative” as to aflatoxin.* (i) Lots which require a single test sample will be certified as “negative” on the aflatoxin certificate if the sample has an aflatoxin level at or below 15 ppb. If the aflatoxin level is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §§ 983.52 and 983.152.

(ii) Lots which require two test samples will be certified as “negative” on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 10 ppb. If the aflatoxin level of Test Sample #1 is above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §§ 983.52 and 983.152. If the aflatoxin level of Test Sample #1 is above 10 ppb and at or

below 20 ppb, the accredited laboratory may at the handler’s discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternately, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 is at or below 15 ppb. If the averaged aflatoxin level of Test Samples #1 and #2 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §§ 983.52 and 983.152.

(iii) The accredited laboratory shall send a copy of the failed lot notification report to the Committee and to the failed lot’s owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight,

grade, and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of pistachios shipped domestically does not exceed the aflatoxin levels as required in paragraph (a) of this section or as provided under § 983.50. Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the production year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Sample #2 for certification purposes, the handler may request that the laboratory return it to the handler.

[74 FR 56530, Nov. 2, 2009, as amended at 75 FR 43048, July 23, 2010]

§ 983.152 Failed lots/rework procedure.

(a) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin regulations of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150, except that the lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(b) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the

aflatoxin regulations in § 983.150, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150.

[74 FR 56531, Nov. 2, 2009]

§ 983.155 Reinspection.

(a) Any lot of inshell pistachios that is pin-picked, hand-sorted, color-sorted, and/or resized is considered to be "materially changed." Pistachios which are roasted, salted, flavored, air-legged, dyed, color-coated, cleaned, and otherwise subjected to similar processes are not considered to be materially changed.

(b) Each handler who handles pistachios shall cause any lot or portion of a lot initially certified for aflatoxin, and subsequently materially changed, to be reinspected for aflatoxin and certified as a new lot or new lots: *Provided*, That, handlers exempted from order requirements under § 983.92 are exempt from all reinspection requirements.

[70 FR 61226, Oct. 21, 2005, as amended at 71 FR 51987, Sept. 1, 2006; 72 FR 69141, Dec. 7, 2007. Redesignated and amended at 74 FR 56530, Nov. 2, 2009]

§ 983.164 Reports.

(a) *ACP-2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots that fail to meet the order's maximum aflatoxin requirements by completing section A of this form. Handlers shall furnish this report to the committee no later than 10 days after completion of the aflatoxin test. Each USDA-approved aflatoxin testing laboratory shall complete section C of this report, and forward this report and the failing aflatoxin test results to the